IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Review Petition No.20 of 2007
in
Appeal from Order No.705 of 2007.

Harishchandra S. Gurav ..Petitioner

versus

Sulochana Gurav & Ors. ..Respondent.

Mr.Kuldeep Patil for the Appellant

Mr.Suresh Gole i/b. Gole & Co. for the Respondent Nos.1 & 2.

Shri Thorat for the Respondent No.4 MHADA

Coram : S.R.Sathe, J.
Dated : 26th Oct., 2007

P.C.

1. Applicant, Original Defendant No.1 and Appellant in A.O. No.705 of 2007 has filed the present Application for review of the Order passed by this Court in A.O. No.705/2007 on 20.9.2007.

2. It is the case of the applicant that while hearing the Appeal from Order No. 705/2007 the present applicant was directed to file copy of Notice of Motion against which the said A.O. was filed and all the documents relied upon by the plaintiffs in S.C.Suit No.2749 of 2004 at the time of hearing of the Notice of Motion No.3560 of 2006.

However, the present applicant instead of producing the copy of the Notice of Motion No.3560 of 2006 produced the copy of the Notice of Motion No.2304 of 2004. According to him the prayers in the above mentioned two Notice of Motion were different. While disposing of the A.O. this Court has made following observation in paragraph No.3 of the Order.

> Plaintiffs also filed Notice of Motion and prayed for temporary injunction restraining defendant No.1 from obstructing them fro their joint use, enjoyment and occupation of transit accommodation and new tenement allotted in the name of defendant No.1.

According to the applicant, as he wrongly filed the copy of the different notice of Motion the above mentioned observations have been made by this Court and thus there is apparent error on the face on record and it is necessary to rectify the same and also pass necessary order and set aside the final order passed by this Court.

3. It is correct that the observations in para 3 of the Order passed in A.O. are made on the basis of the copy of the Notice of Motion No.2304 of 2004 which was produced by the appellant. So the said

observation can be recalled only with a view that there should not be any mistake apparent on the face of record.

4. So, instead of existing observations, in paragraph No.3 it is observed that Plaintiffs have filed application seeking temporary direction to the he defendants 2 and or defendant No.3, jointly or severally as the case may be allott the permanent tenement in lieu of the earlier tenement namely Room No.24/B/SF/2nd floor, Karnataka Housing Society, Old Building, Moghul Lane, Mahim, Mumbai, and for temporary direction directing the defendant No.2 and or 3 jointly or severally to allow and hand over the possession of the permanent tenement in lieu of earlier tenement jointly to plaintiff and defendant No.1.

5. The applicant has failed to show sufficient cause to review the final Order passed in the A.O.

6. Even after such modification there is absolutely no necessity to make any change in the final order that has been passed by this Court because this court has specifically observed in the

Order that in the instant case it is necessary to decide as to who is "Occupier" within the meaning of Section 2(25) of MHADA Act and this can be done only after full trial. At the same time , this Court has observed that prima facie it appears that plaintiff and defendants are not in joint occupation of the suit room No.24 and it would not be proper to direct the defendant No.2 society to allow permanent alternate accommodation jointly to plaintiff and defendant No.1. So, in view of the said observations, necessary order has been passed. So, even if there is mistake on the part of the applicant in producing the correct copy of the notice of Motion, still then there is no reason to change the final order passed in the Order dated 20.9.2007.

. In view of the above, review petition is disposed of accordingly.

(S.R.Sathe, J.)